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10/625,605	07/24/2003	Alberto Peisach	60783.000005	7920
21967 7590 04/17/2007 HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			EXAMINER BUTLER, PATRICK	
			ART UNIT 1732	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/625,605

Applicant(s)

PEISACH ET AL.

Examiner

Patrick Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 17-19 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 17-19 and 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20050705</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 17-19, and 21-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 15 and 18 recite that the curve's shape is "arcuately" curved in line 10 and 11, respectively, which is not described in specification as originally filed. Claims 17, 19, and 21-31 are rejected via their dependency.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15, 17-19, and 21-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 and 18 describe the bottom of the container as being a surface that is "convex to the body cavity when viewed from the outside of the container" in line 12 and lines 12 and 13, respectively. However, it is unclear how "to the body cavity" is meant, particularly given the presence of text about viewing perspective from outside the body.

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cavity. Does the body cavity side of the bottom of the container bulge towards the body cavity to meet the limitation "convex to the body cavity"? Does the opposite side of the bottom of the container bulge away from the container to be "convex...when viewed from the outside of the container"? Applicant's Arguments filed 23 January 2007 implies that "convex to the body cavity when viewed from the outside of the container" means that both sides of the curved surface of the bottom surface bulge away from the cavity. For example, since Jonas is interpreted as not being "convex to the body cavity when viewed from the outside of the container" in Fig. 5, Applicant necessarily intends for the claim language to read on both surfaces of the bottom of the container bulging away from the body cavity. For purposes of examination and to suggest claim language to harmonize the claim language and Applicant's intended meaning, the examiner assumes that the claim's intended language is "both sides of the curved surface of the bottom surface are concave to the body cavity." This means that both sides of the curved surface of the bottom surface bulge away from the bottom cavity. This is because a curve concave to reference point A is a curve that bulges away from reference point A (see *Notes on the Terminology Convex and Concave* in *The American Economic Review*, Vol. 31, No. 1, Adolf Kozlik, page 104, paragraph 1 and figure and *Modern Physics*, John E. Williams et al., page 320, Figure 13-12 parts (A) and (B) and page 685, definitions **concave** and **convex**). Claims 17, 19, and 21-31 are rejected via their dependency.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jonas et al (5,234,126).

With regard to claim 15, Jonas et al teach a method for forming a plastic container for hot-filled food product (abstract; claim 1), comprising: selecting at least one polymer for a plastic container (column 13, lines 57-68); and forming the plastic container from the heated polymer (column 14, lines 1-5); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (column 8, lines 59-68), wherein the bottom surface of the container is formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity, and the concentric ring is proximate to both the curved surface and the container wall (column 5, lines 19-27; Fig. 3 [see outwardly deflected portion of bottom surface]), wherein further the concentric ring is substantially planar between the curved surface and the container wall (see Fig. 3's concentric ring, which is the ring that extends from the wall to the concave surface). Jonas further teaches that the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with

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food product; wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (claim 1); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport, wherein further the flexing surface maintains its inwardly flexed configuration following cooling of the hot-filled container (claim 1; see column 5, lines 19-27).

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the references teach all of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

With respect to the preamble and content of Claim 15 about what the container is for (packaging a hot-filled food product), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As

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it is capable of performing the use, it meets the claim. It is also noted that an actual step of packaging a hot-filled food product is absent.

With regard to claim 17, Jonas et al teaches forming the container may comprise extrusion, injection molding, and blow molding (column 14, lines 1-5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al (5,234,126).

With regard to claim 18, Jonas et al teach a method for forming a plastic container with a selectively deformable surface (abstract), comprising: selecting at least one polymer for a plastic container (column 13, lines 57-68); and thermoforming a container from the heated polymer (column 14, lines 1-5); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (column 8, lines 59-68), wherein the bottom surface of the container is formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity, and the concentric ring is proximate to both the curved surface and the container wall (column 5, lines 19-27; Fig. 3 [see outwardly deflected portion of bottom surface]), wherein further the concentric ring is substantially planar between the curved surface

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and the container wall (see Fig. 3's concentric ring, which is the ring that extends from the wall to the concave surface). Jonas further teaches that the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with food product; wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (claim 1); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport, wherein further the flexing surface maintains its inwardly flexed configuration following cooling of the hot-filled container (claim 1; see column 5, lines 19-27).

Jonas et al. do not disclose expressly that the plastic sheet is heated to its VICAT temperature before thermoforming.

However, Examiner takes Official Notice that it is well known to heat a plastic sheet to its VICAT temperature before thermoforming.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the plastic sheet to its VICAT temperature before thermoforming since Examiner takes official notice that heating a plastic sheet to its VICAT temperature before thermoforming is well known in the plastic forming art.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the references teach all

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of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

With respect to the preamble and content of Claim 18 about what the container is for (packaging a hot-filled food product), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As it is capable of performing the use, it meets the claim. It is also noted that an actual step of packaging a hot-filled food product is absent.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al (4,667,454).

With regard to claim 18, McHenry et al teach a method for forming a plastic container with a selectively deformable surface (abstract), comprising: selecting at least one polymer for a plastic container (column 4, lines 48-61); and thermoforming a container from the heated polymer (column 3, line 39); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (Figure 1A) wherein the bottom surface of the container is formed to

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consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity, and the concentric ring is proximate to both the curved surface and the container wall (Figure 1A, approximately at Ref. No. 7); wherein further the concentric ring is substantially planar between the curved surface and the container wall (Fig. 1A, approximately at Ref. No. 9b extending from the sidewall 3 to the curved area 7); wherein further one of the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with food product (Figure 1B); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (reduction of volume will inherently perform this task); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport, wherein further the flexing surface maintains its inwardly flexed configuration following cooling of the hot-filled container (Figure 1A and 1B).

McHenry et al. do not disclose expressly that the plastic sheet is heated to its VICAT temperature before thermoforming.

However, Examiner takes Official Notice that it is well known to heat a plastic sheet to its VICAT temperature before thermoforming.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the plastic sheet to its VICAT temperature before thermoforming since Examiner takes official notice that heating a plastic sheet to its VICAT temperature before thermoforming is well known in the plastic forming art.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the references teach all of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

With respect to the preamble and content of Claim 18 about what the container is for (packaging a hot-filled food product), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As it is capable of performing the use, it meets the claim. It is also noted that an actual step of packaging a hot-filled food product is absent.

Claims 18 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agrawal et al (5,234,126).

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With regard to claim 18, Agrawal et al. teach a method for forming a plastic container with a selectively deformable surface (abstract), comprising: selecting at least one polymer for a plastic container (abstract, polyester); and thermoforming a container from the heated polymer (column 6, lines 44-50); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (Figure 6), wherein the bottom surface of the container is formed during thermoforming to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity, and the concentric ring is proximate to both the curved surface and the container wall (abstract; see Fig. 3, Ref. 64 [outwardly flexed]); wherein further the concentric ring is substantially planar between the curved surface and the container wall (See Fig. 3 between ref. no. 64 and the side wall); wherein further the inward flexing of the bottom surface or the container wall reduces a pressure differential between the inside of the container and atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (reduction of volume will inherently perform this task); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport (see col. 10, lines 65-68).

Agrawal et al. do not disclose expressly that the plastic sheet is heated to its VICAT temperature before thermoforming.

However, Examiner takes Official Notice that it is well known to heat a plastic sheet to its VICAT temperature before thermoforming.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the plastic sheet to its VICAT temperature before thermoforming since Examiner takes official notice that heating a plastic sheet to its VICAT temperature before thermoforming is well known in the plastic forming art.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the references teach all of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

With respect to the preamble and content of Claim 18 about what the container is for (packaging a hot-filled food product), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As it is capable of performing the use, it meets the claim. It is also noted that an actual step of packaging a hot-filled food product is absent.

With regard to claim 29, Agrawal et al teach a range of preform, neck, wall, and bottom thicknesses that anticipate the ranges described by claim 29. Agrawal et al

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teach that the preform may be 1250 to 5000 μm thick (column 6, lines 15-18), the wall thickness may be 250 to 900 μm thick, the bottom may be 250 to 1800 μm thick and the shoulder area may be 350-1250 μm thick (column 12, lines 52-61). For example, the equation would be satisfied if the preform were 1600 μm thick, the shoulder was 1250 μm thick, the wall was 600 μm thick and the bottom were 300 μm thick.

With regard to claim 30, Agrawal et al teach that the container does not have uniform wall thickness due to the differences in the amount of stretch in different areas. Stretching a preform with uniformly thick walls will result in a uniform decrease in thickness from the top to the bottom of the finished container.

With regard to claim 31, Agrawal et al teach the invention of claim 30 as discussed above, but does not explicitly disclose the thicknesses of 0.7 mm at the mouth, 0.28 mm near the bottom, and 0.16 mm at the bottom of the container. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used these thicknesses, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art and it is well known that the thickness of a container is a result effective variable where the result is the crush strength of the container. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al (5,234,126) as applied to claim 18 above, and further in view of Hodson et al (US 2002/0187290).

With regard to claim 21, Jonas et al teach the invention of claim 18 as discussed above, but does not explicitly teach that the circumference of the mouth is greater than the circumference of the bottom surface. Hodson et al teaches a container for food storage that can be used with a hot fill application (paragraph 0057) in which the circumference of the mouth is greater than the circumference of the bottom surface (figure 3). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to create a container where the circumference of the mouth is greater than the circumference of the bottom in the process of Jonas et al. The motivation to do so would have been to facilitate easy removal of a semi-solid food product from the container.

With regard to claim 22, Jonas et al teach that the plastic/polypropylene (column 13, line 65) comprises a plastic suitable for solid phase pressure forming (column 14, line 5, thermoforming).

With regard to claim 23, Jonas et al teach the plastic further comprises polypropylene (column 13, line 65).

With regard to claim 24, Jonas et al teach the plastic further comprises a barrier enhancement agent (column 13, line 64, EVOH).

With regard to claim 25, Jonas et al teach the barrier enhancement agent comprises ethylene vinyl acetate-vinyl alcohol (column 13, line 64, EVOH).

With regard to claim 26, Hodson et al teach the plastic further comprises an adhesive suitable for solid phase pressure forming, polypropylene and EVOH (paragraph 0052).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al (5,234,126) in view of Hodson et al (US 2002/0187290) as applied to claim 26 above and further in view of Hope et al (5,202,192).

With regard to claim 27, Jonas et al in view of Hodson et al. teach the invention of claim 26 as discussed above, but do not explicitly teach that the adhesive contains an antioxidant. Hope et al. teach a plastic container comprising an adhesive blend containing an antioxidant (column 2, lines 66-68). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add an antioxidant to the adhesive taught by Hodson et al. The motivation to do so would have been protect the food contained in the container from oxidation.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al (5,234,126) in view of Hodson et al (US 2002/0187290) as applied to Claim 22 above, and further in view of McHenry et al. II (US Patent No. 4,554,190).

With respect to Claim 28 McHenry II teaches a plastic container with the components of Hodson (polypropylene, EVOH, and adhesive) (see col. 18, lines 39-42). The components are 89% PP (80-90%) (see col. 18, lines 39-42), which meets the limitations of the claim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine McHenry II's plastic component portions with the structure taught by Jonas in view of Hodson because McHenry II's invention is within the same field of endeavor as Jonas in view of Hodson as it is directed to making plastic containers (abstract) and contains the same components (see col. 18, lines 39-42).

Response to Arguments

Applicant's arguments filed 23 January 2007 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 112 rejections. Applicant's arguments appear to be on the grounds that:

1) The alleged lack of clarity with respect to "to the cavity" is clarified by the amendment reciting "the entire curved surface is convex to the body cavity when viewed from the outside of the container."

Applicant argues with respect to the 35 USC 102 and 103 rejections. Applicant's arguments appear to be on the grounds that:

2) Jonas's center portion 16 is recessed rather than being concave to the body cavity.

3) Jonas's bottom surfaces in Figs. 1 and 3 do not consist of an arcuately curved surface and a concentric ring.

4) Since all of the claimed steps are not taught to be performed, the results are not necessarily achieved.

5) McHenry is relied upon to teach a substantially flat portion 7, which is not proximate the curved surface and the container wall.

6) McHenry's bottom surfaces in Figs. 1A-H do not consist of an arcuately curved surface and a concentric ring.

7 and 12) Agrawal's bottom surface in Fig. 3 does not consist of an arcuately curved surface and a concentric ring since the portion of the bottom of the container

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between elements 64 and 68 is not proximate to both the curved surface of the bottom of the container and the container wall.

8 and 13) Since Agrawal's base region 64 projects inwardly a distance D2 (see col. 10, lines 56-58 and Fig. 3), the curved surface of the container bottom is not entirely concave to the body cavity.

9) None of Hodson, Hope, or McHenry II make up for the deficiencies of the other references relied upon in teaching the claimed bottom surface of the container.

10) Relying on Jonas's teaching of a concave bottom surface does not make up for the convex portion excluded by the term consisting.

11) Since McHenry's bottom surface in Fig. 1A contains a convex section, the substantially flat portion of the bottom surface is not proximate to the curved surface and wall.

14) Since the Examiner relies on Agrawal to flex out during expansion, the Examiner agrees that Agrawal does not maintain an inward flex following cooling of a hot-filled food product.

The Applicant's arguments are addressed as follows:

1) The new claim language stating "the entire curved surface is convex to the body cavity when viewed from the outside of the container" remains unclear as described above. Applicant is suggested to use claim language stating "both sides of the curved surface of the bottom surface are concave to the body cavity" as described above.

2) Jonas's center portion 16 clearly bulges away from the body cavity as shown in Fig. 1 and 3, which makes it concave to the body cavity.

3) The bottom of Jonas's container consists of an arcuately shaped central portion concave to the cavity and a ring that bridges from the central portion to the wall. The ring is substantially flat. Thus, the bottom consists of the ring and central portion (see column 5, lines 19-27; Fig. 3 [see outwardly deflected portion of bottom surface and the concentric ring, which is the ring that extends from the wall to the concave surface]).

4) Discussion of the result of incomplete claim steps is moot given the presence of the claim steps as previously described.

5) McHenry's substantially flat surface bridges from the wall to the surface 7 concave to the cavity (see Fig. 1A).

6 and 11) The bottom of McHenry's container consists of an arcuately shaped central portion 7 concave to the cavity and a ring ((Fig. 1A, approximately at Ref. No. 9b extending from the sidewall 3 to the curved area 7) that bridges from the central portion to the wall. The ring is substantially flat. Thus, the bottom consists of the ring and central portion (see Figure 1A).

7 and 12) The bottom of Agrawal's container consists of an arcuately shaped central portion 64 concave to the cavity and a ring (See Fig. 3 between ref. no. 64 and the side wall) that bridges from the central portion to the wall. The ring is substantially flat. Thus, the bottom consists of the ring and central portion (see Figure 1A).

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7) Applicant's Arguments with respect to the portion of the bottom of the container between elements 64 and 68 is moot in view of the new grounds of rejection as necessitated by applicant's claim amendment that a ring rather than a sleeve is claimed.

8 and 13) Only the portion of Agrawal's container bottom 64 concave to the cavity is relied upon as being the arcuately shaped concave ring. The distance D2 appears to not be reached by the bulge in the center portion of the bottom 64. Thus, the bulge's shape does not contribute to D2, and therefore, the direction of D2 whether inward or outward is moot (see Fig. 3).

9) Whether Hodson, Hope, or McHenry II teaches the claimed bottom surface of the container is moot because they are not relied upon for teaching the bottom surface.

10) The bottom of Jonas's container consists of an arcuately shaped central portion concave to the cavity and a ring that bridges from the central portion to the wall. The ring extends from the corner 20 of the arcuately shaped central portion concave to the cavity to the container wall. The only claimed requirement of the ring's shape is that it is substantially flat. Within the ring is the portion of the bottom of the container that the container rests on. This portion of the ring is flat, and it is a substantial portion of the ring. This, the ring is substantially flat, which meets the limitation of the claim (see Jonas, Fig. 3).

14) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., flexing or maintaining inward during expansion) are not recited in the rejected

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claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mo.-Th. 7:30 a.m. - 5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

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Patrick Butler
Assistant Examiner
Art Unit 1732



CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER

4/16/07